

**Introduced by Senator Torlakson**

February 22, 2005

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An act to amend Sections 1942.6 and 1962 of, and to add Section 1962.1 to, the Civil Code, and to amend Section 602 of the Penal Code, relating to tenancy.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 735, as introduced, Torlakson. Tenancy.

(1) Existing law provides that a person entering real property during certain hours or circumstances, when invited by the occupant to provide tenants' rights information or to participate in specified associations, is not civilly or criminally liable for trespass.

This bill would provide that a lessor or a lessor's agent that prevents or attempts to prevent an entry, as described above, is liable in a civil action for actual damages and punitive damages under specified circumstances. The bill would require a court to award reasonable attorney's fees to a prevailing party in this action if either party requests attorney's fees.

(2) Existing law requires any owner of a dwelling structure containing one or more units offered to the public for rent or residential lease to disclose to a tenant various information, including the address at which personal service may be effected for each manager and each owner of the premises, the telephone numbers of those persons, and the name and address of the person or entity to whom rent payments shall be made. Existing law requires the information required be kept current and that these requirement extend to any successor owner or manager, who must comply within 15 days of succeeding a prior owner or manager.

This bill would require that, not later than 5 days after ownership of a residential dwelling, as described above, is transferred, the transferor

owner notify a tenant of the change in ownership and the name of any new owner, as specified. The bill would require the new owner, within 15 days of the transfer, to submit a written statement to each tenant with specified information and to attach a copy of the recorded deed of transfer. The bill would require an owner engaging a new agent to execute a notarized certificate of agency, and to provide a copy of that certificate and other information to each tenant, as specified. The bill would provide that, until an owner complies with these requirements, a tenant who appropriately pays rent, pursuant to payment information that the tenant has already received, is not liable for nonpayment of rent, as specified.

(3) Existing law makes it a misdemeanor to willfully commit a trespass by engaging in specified acts, but excepts from these provisions certain lawful labor activities.

This bill would except from the trespass provisions, described above, persons entering property, when invited by the occupant, for purposes of providing tenants' rights information or participating in specified associations.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1942.6 of the Civil Code is amended to  
2 read:

3 1942.6. Any person entering onto residential real property,  
4 upon the invitation of an occupant, during reasonable hours or  
5 because of emergency circumstances, for the purpose of  
6 providing information regarding tenants' rights or to participate  
7 in a lessees' association or association of tenants or an  
8 association that advocates tenants' rights shall not be liable in  
9 any criminal or civil action for trespass.

10 (b) *A lessor or agent of a lessor who prevents or attempts to*  
11 *prevent an entry onto residential real property described in*  
12 *subdivision (a) shall be liable in a civil action for all of the*  
13 *following:*

14 (1) *Actual damages sustained.*

15 (2) *Punitive damages in an amount of not less than one*  
16 *hundred dollars (\$100) nor more than one thousand dollars*

1 (\$1,000) if the lessor or agent has been guilty of fraud,  
2 oppression, or malice with respect to the violation.

3 (c) In an action brought pursuant to this section, the court  
4 shall award reasonable attorney's fees to the prevailing party if  
5 either party requests attorney's fees.

6 (d) The remedies provided by this section shall be in addition  
7 to any other remedies provided by law.

8 (e) The Legislature finds and declares that ~~this section~~  
9 subdivision (a) is declaratory of existing law. Nothing in ~~this~~  
10 ~~section~~ subdivision (a) shall be construed to enlarge or diminish  
11 the rights of any person under existing law.

12 SEC. 2. Section 1962 of the Civil Code is amended to read:

13 1962. (a) Any owner of a dwelling structure specified in  
14 Section 1961 or a party signing a rental agreement or lease on  
15 behalf of the owner shall do all of the following:

16 (1) Disclose therein the name, telephone number, and usual  
17 street address at which personal service may be effected of each  
18 person who is:

19 (A) Authorized to manage the premises.

20 (B) An owner of the premises or a person who is authorized to  
21 act for and on behalf of the owner for the purpose of service of  
22 process and for the purpose of receiving and receipting for all  
23 notices and demands.

24 (2) Disclose therein the name, telephone number, and address  
25 of the person or entity to whom rent payments shall be made.

26 (A) If rent payments may be made personally, the usual days  
27 and hours that the person will be available to receive the  
28 payments shall also be disclosed.

29 (B) At the owner's option, the rental agreement or lease shall  
30 instead disclose the number of either:

31 (i) The account in a financial institution into which rent  
32 payments may be made, and the name and street address of the  
33 institution; provided that the institution is located within five  
34 miles of the rental property.

35 (ii) The information necessary to establish an electronic funds  
36 transfer procedure for paying the rent.

37 (3) Disclose therein the form or forms in which rent payments  
38 are to be made.

39 (4) Provide a copy of the rental agreement or lease to the  
40 tenant within 15 days of its execution by the tenant. Once each

1 calendar year thereafter, upon request by the tenant, the owner or  
2 owner's agent shall provide an additional copy to the tenant  
3 within 15 days. If the owner or owner's agent does not possess  
4 the rental agreement or lease or a copy of it, the owner or  
5 owner's agent shall instead furnish the tenant with a written  
6 statement stating that fact and containing the information  
7 required by paragraphs (1), (2), and (3) of subdivision (a).

8 (b) In the case of an oral rental agreement, the owner, or a  
9 person acting on behalf of the owner for the receipt of rent or  
10 otherwise, shall furnish the tenant, within 15 days of the  
11 agreement, with a written statement containing the information  
12 required by paragraphs (1), (2), and (3) of subdivision (a). Once  
13 each calendar year thereafter, upon request by the tenant, the  
14 owner or owner's agent shall provide an additional copy of the  
15 statement to the tenant within 15 days.

16 (c) The information required by this section shall be kept  
17 current and this section shall extend to and be enforceable against  
18 any successor owner or manager, ~~who shall comply with this~~  
19 ~~section within 15 days of succeeding the previous owner or~~  
20 ~~manager.~~

21 (d) A party who enters into a rental agreement on behalf of the  
22 owner who fails to comply with this section is deemed an agent  
23 of each person who is an owner:

24 (1) For the purpose of service of process and receiving and  
25 receipting for notices and demands.

26 (2) For the purpose of performing the obligations of the owner  
27 under law and under the rental agreement.

28 (3) For the purpose of receiving rental payments, which may  
29 be made in cash, by check, by money order, or in any form  
30 previously accepted by the owner or owner's agent, unless the  
31 form of payment has been specified in the oral or written  
32 agreement, or the tenant has been notified by the owner in  
33 writing that a particular form of payment is unacceptable.

34 (e) Nothing in this section limits or excludes the liability of  
35 any undisclosed owner.

36 (f) If the address provided by the owner does not allow for  
37 personal delivery, then it shall be conclusively presumed that  
38 upon the mailing of any rent or notice to the owner by the tenant  
39 to the name and address provided, the notice or rent is deemed  
40 receivable by the owner on the date posted, if the tenant can

1 show proof of mailing to the name and address provided by the  
2 owner.

3 SEC. 3. Section 1962.1 is added to the Civil Code, to read:

4 1962.1. (a) Not later than five days after ownership of a  
5 dwelling described in Section 1961 is transferred, the transferor  
6 owner shall notify a tenant of the change in ownership and the  
7 name of any new owner. If a new owner is not a natural person,  
8 the transferor owner shall also notify the tenants of any natural  
9 person authorized to act for the new owner.

10 (b) The new owner shall, within 15 days of the transfer  
11 described in subdivision (a), submit a written statement to each  
12 tenant with the information required by Section 1962. The new  
13 owner shall attach a copy of the recorded deed to the written  
14 statement.

15 (c) An owner engaging a new agent, including a manager,  
16 authorized to act for the owner with respect to a dwelling  
17 described in Section 1961, shall execute a notarized certificate of  
18 agency, with its effective date. Within 15 days of engaging the  
19 new agent, and prior to the new agent beginning his or her duties,  
20 the owner shall submit a written statement to each tenant with the  
21 information required by Section 1962 and the owner shall attach  
22 a copy of the notarized certificate to the written statement. If the  
23 agent is not a natural person, the owner shall also disclose the  
24 name of any natural person authorized to act for the owner. The  
25 new agent shall produce the original notarized certificate upon  
26 the request of a tenant.

27 (d) Until the transferring owner complies with subdivision (a),  
28 or the new owner complies with subdivision (b), a tenant who  
29 pays the rent in a timely manner according to the terms of the  
30 previous notice under Section 1962 shall not be liable for  
31 nonpayment of rent. In any unlawful detainer action brought for  
32 nonpayment of rent, the owner shall bear the burden of proof that  
33 the owner complied with subdivision (a) or (b).

34 (e) Until the owner who has engaged a new agent has  
35 complied with subdivision (c), a tenant who pays the rent in a  
36 timely manner according to the terms of the previous notice  
37 under Section 1962 shall not be liable for nonpayment of rent. In  
38 any unlawful detainer action brought for nonpayment of rent, the  
39 owner shall bear the burden of proof that the owner complied  
40 with subdivision (c).

1 SEC. 4. Section 602 of the Penal Code is amended to read:

2 602. Except as provided in paragraph (2) of subdivision (v),  
3 subdivision (x), and Section 602.8, every person who willfully  
4 commits a trespass by any of the following acts is guilty of a  
5 misdemeanor:

6 (a) Cutting down, destroying, or injuring any kind of wood or  
7 timber standing or growing upon the lands of another.

8 (b) Carrying away any kind of wood or timber lying on those  
9 lands.

10 (c) Maliciously injuring or severing from the freehold of  
11 another anything attached to it, or its produce.

12 (d) Digging, taking, or carrying away from any lot situated  
13 within the limits of any incorporated city, without the license of  
14 the owner or legal occupant, any earth, soil, or stone.

15 (e) Digging, taking, or carrying away from land in any city or  
16 town laid down on the map or plan of the city, or otherwise  
17 recognized or established as a street, alley, avenue, or park,  
18 without the license of the proper authorities, any earth, soil, or  
19 stone.

20 (f) Maliciously tearing down, damaging, mutilating, or  
21 destroying any sign, signboard, or notice placed upon, or affixed  
22 to, any property belonging to the state, or to any city, county, city  
23 and county, town or village, or upon any property of any person,  
24 by the state or by an automobile association, which sign,  
25 signboard or notice is intended to indicate or designate a road, or  
26 a highway, or is intended to direct travelers from one point to  
27 another, or relates to fires, fire control, or any other matter  
28 involving the protection of the property, or putting up, affixing,  
29 fastening, printing, or painting upon any property belonging to  
30 the state, or to any city, county, town, or village, or dedicated to  
31 the public, or upon any property of any person, without license  
32 from the owner, any notice, advertisement, or designation of, or  
33 any name for any commodity, whether for sale or otherwise, or  
34 any picture, sign, or device intended to call attention to it.

35 (g) Entering upon any lands owned by any other person  
36 whereon oysters or other shellfish are planted or growing; or  
37 injuring, gathering, or carrying away any oysters or other  
38 shellfish planted, growing, or on any of those lands, whether  
39 covered by water or not, without the license of the owner or legal  
40 occupant; or damaging, destroying, or removing, or causing to be

1 removed, damaged, or destroyed, any stakes, marks, fences, or  
2 signs intended to designate the boundaries and limits of any of  
3 those lands.

4 (h) (1) Entering upon lands or buildings owned by any other  
5 person without the license of the owner or legal occupant, where  
6 signs forbidding trespass are displayed, and whereon cattle,  
7 goats, pigs, sheep, fowl, or any other animal is being raised, bred,  
8 fed, or held for the purpose of food for human consumption; or  
9 injuring, gathering, or carrying away any animal being housed on  
10 any of those lands, without the license of the owner or legal  
11 occupant; or damaging, destroying, or removing, or causing to be  
12 removed, damaged, or destroyed, any stakes, marks, fences, or  
13 signs intended to designate the boundaries and limits of any of  
14 those lands.

15 (2) In order for there to be a violation of this subdivision, the  
16 trespass signs under paragraph (1) must be displayed at intervals  
17 not less than three per mile along all exterior boundaries and at  
18 all roads and trails entering the land.

19 (3) This subdivision shall not be construed to preclude  
20 prosecution or punishment under any other provision of law,  
21 including, but not limited to, grand theft or any provision that  
22 provides for a greater penalty or longer term of imprisonment.

23 (i) Willfully opening, tearing down, or otherwise destroying  
24 any fence on the enclosed land of another, or opening any gate,  
25 bar, or fence of another and willfully leaving it open without the  
26 written permission of the owner, or maliciously tearing down,  
27 mutilating, or destroying any sign, signboard, or other notice  
28 forbidding shooting on private property.

29 (j) Building fires upon any lands owned by another where  
30 signs forbidding trespass are displayed at intervals not greater  
31 than one mile along the exterior boundaries and at all roads and  
32 trails entering the lands, without first having obtained written  
33 permission from the owner of the lands or the owner's agent, or  
34 the person in lawful possession.

35 (k) Entering any lands, whether unenclosed or enclosed by  
36 fence, for the purpose of injuring any property or property rights  
37 or with the intention of interfering with, obstructing, or injuring  
38 any lawful business or occupation carried on by the owner of the  
39 land, the owner's agent or by the person in lawful possession.

1 (l) Entering any lands under cultivation or enclosed by fence,  
2 belonging to, or occupied by, another, or entering upon  
3 uncultivated or unenclosed lands where signs forbidding trespass  
4 are displayed at intervals not less than three to the mile along all  
5 exterior boundaries and at all roads and trails entering the lands  
6 without the written permission of the owner of the land, the  
7 owner's agent or of the person in lawful possession, and

8 (1) Refusing or failing to leave the lands immediately upon  
9 being requested by the owner of the land, the owner's agent or by  
10 the person in lawful possession to leave the lands, or

11 (2) Tearing down, mutilating, or destroying any sign,  
12 signboard, or notice forbidding trespass or hunting on the lands,  
13 or

14 (3) Removing, injuring, unlocking, or tampering with any lock  
15 on any gate on or leading into the lands, or

16 (4) Discharging any firearm.

17 (m) Entering and occupying real property or structures of any  
18 kind without the consent of the owner, the owner's agent, or the  
19 person in lawful possession.

20 (n) Driving any vehicle, as defined in Section 670 of the  
21 Vehicle Code, upon real property belonging to, or lawfully  
22 occupied by, another and known not to be open to the general  
23 public, without the consent of the owner, the owner's agent, or  
24 the person in lawful possession. This subdivision shall not apply  
25 to any person described in Section 22350 of the Business and  
26 Professions Code who is making a lawful service of process,  
27 provided that upon exiting the vehicle, the person proceeds  
28 immediately to attempt the service of process, and leaves  
29 immediately upon completing the service of process or upon the  
30 request of the owner, the owner's agent, or the person in lawful  
31 possession.

32 (o) Refusing or failing to leave land, real property, or  
33 structures belonging to or lawfully occupied by another and not  
34 open to the general public, upon being requested to leave by (1) a  
35 peace officer at the request of the owner, the owner's agent, or  
36 the person in lawful possession, and upon being informed by the  
37 peace officer that he or she is acting at the request of the owner,  
38 the owner's agent, or the person in lawful possession, or (2) the  
39 owner, the owner's agent, or the person in lawful possession. The  
40 owner, the owner's agent, or the person in lawful possession



1 shall make a separate request to the peace officer on each  
 2 occasion when the peace officer's assistance in dealing with a  
 3 trespass is requested. However, a single request for a peace  
 4 officer's assistance may be made to cover a limited period of  
 5 time not to exceed 30 days and identified by specific dates,  
 6 during which there is a fire hazard or the owner, owner's agent or  
 7 person in lawful possession is absent from the premises or  
 8 property. In addition, a single request for a peace officer's  
 9 assistance may be made for a period not to exceed six months  
 10 when the premises or property is closed to the public and posted  
 11 as being closed. However, this subdivision shall not be applicable  
 12 to persons engaged in lawful labor union activities which are  
 13 permitted to be carried out on the property by the California  
 14 Agricultural Labor Relations Act, Part 3.5 (commencing with  
 15 Section 1140) of Division 2 of the Labor Code, or by the  
 16 National Labor Relations Act, *or to persons entering property*  
 17 *pursuant to Section 1942.6 of the Civil Code.* For purposes of this  
 18 section, land, real property, or structures owned or operated by  
 19 any housing authority for tenants as defined under Section  
 20 34213.5 of the Health and Safety Code constitutes property not  
 21 open to the general public; however, this subdivision shall not  
 22 apply to persons on the premises who are engaging in activities  
 23 protected by the California or United States Constitution, or to  
 24 persons who are on the premises at the request of a resident or  
 25 management and who are not loitering or otherwise suspected of  
 26 violating or actually violating any law or ordinance.

27 (p) Entering upon any lands declared closed to entry as  
 28 provided in Section 4256 of the Public Resources Code, if the  
 29 closed areas shall have been posted with notices declaring the  
 30 closure, at intervals not greater than one mile along the exterior  
 31 boundaries or along roads and trails passing through the lands.

32 (q) Refusing or failing to leave a public building of a public  
 33 agency during those hours of the day or night when the building  
 34 is regularly closed to the public upon being requested to do so by  
 35 a regularly employed guard, watchman, or custodian of the  
 36 public agency owning or maintaining the building or property, if  
 37 the surrounding circumstances would indicate to a reasonable  
 38 person that the person has no apparent lawful business to pursue.

1 (r) Knowingly skiing in an area or on a ski trail which is  
2 closed to the public and which has signs posted indicating the  
3 closure.

4 (s) Refusing or failing to leave a hotel or motel, where he or  
5 she has obtained accommodations and has refused to pay for  
6 those accommodations, upon request of the proprietor or  
7 manager, and the occupancy is exempt, pursuant to subdivision  
8 (b) of Section 1940 of the Civil Code, from Chapter 2  
9 (commencing with Section 1940) of Title 5 of Part 4 of Division  
10 3 of the Civil Code. For purposes of this subdivision, occupancy  
11 at a hotel or motel for a continuous period of 30 days or less  
12 shall, in the absence of a written agreement to the contrary, or  
13 other written evidence of a periodic tenancy of indefinite  
14 duration, be exempt from Chapter 2 (commencing with Section  
15 1940) of Title 5 of Part 4 of Division 3 of the Civil Code.

16 (t) Entering upon private property, including contiguous land,  
17 real property, or structures thereon belonging to the same owner,  
18 whether or not generally open to the public, after having been  
19 informed by a peace officer at the request of the owner, the  
20 owner's agent, or the person in lawful possession, and upon  
21 being informed by the peace officer that he or she is acting at the  
22 request of the owner, the owner's agent, or the person in lawful  
23 possession, that the property is not open to the particular person;  
24 or refusing or failing to leave the property upon being asked to  
25 leave the property in the manner provided in this subdivision.

26 This subdivision shall apply only to a person who has been  
27 convicted of a violent felony, as specified in subdivision (c) of  
28 Section 667.5, committed upon the particular private property. A  
29 single notification or request to the person as set forth above shall  
30 be valid and enforceable under this subdivision unless and until  
31 rescinded by the owner, the owner's agent, or the person in  
32 lawful possession of the property.

33 (u) (1) Knowingly entering, by an unauthorized person, upon  
34 any airport operations area if the area has been posted with  
35 notices restricting access to authorized personnel only and the  
36 postings occur not greater than every 150 feet along the exterior  
37 boundary.

38 (2) Any person convicted of a violation of paragraph (1) shall  
39 be punished as follows:

40 (A) By a fine not exceeding one hundred dollars (\$100).

1 (B) By imprisonment in the county jail not exceeding six  
2 months, or by a fine not exceeding one thousand dollars (\$1,000),  
3 or both, if the person refuses to leave the airport operations area  
4 after being requested to leave by a peace officer or authorized  
5 personnel.

6 (C) By imprisonment in the county jail not exceeding six  
7 months, or by a fine not exceeding one thousand dollars (\$1,000),  
8 or both, for a second or subsequent offense.

9 (3) As used in this subdivision the following definitions shall  
10 control:

11 (A) "Airport operations area" means that part of the airport  
12 used by aircraft for landing, taking off, surface maneuvering,  
13 loading and unloading, refueling, parking, or maintenance, where  
14 aircraft support vehicles and facilities exist, and which is not for  
15 public use or public vehicular traffic.

16 (B) "Authorized personnel" means any person who has a valid  
17 airport identification card issued by the airport operator or has a  
18 valid airline identification card recognized by the airport  
19 operator, or any person not in possession of an airport or airline  
20 identification card who is being escorted for legitimate purposes  
21 by a person with an airport or airline identification card.

22 (C) "Airport" means any facility whose function is to support  
23 commercial aviation.

24 (v) (1) Except as permitted by federal law, intentionally  
25 avoiding submission to the screening and inspection of one's  
26 person and accessible property in accordance with the procedures  
27 being applied to control access when entering or reentering a  
28 sterile area of an airport, as defined in Section 171.5.

29 (2) A violation of this subdivision that is responsible for the  
30 evacuation of an airport terminal and is responsible in any part  
31 for delays or cancellations of scheduled flights is punishable by  
32 imprisonment of not more than one year in a county jail if the  
33 sterile area is posted with a statement providing reasonable notice  
34 that prosecution may result from a trespass described in this  
35 subdivision.

36 (w) Refusing or failing to leave a battered women's shelter at  
37 any time after being requested to leave by a managing authority  
38 of the shelter.

1 (1) A person who is convicted of violating this subdivision  
2 shall be punished by imprisonment in a county jail for not more  
3 than one year.

4 (2) The court may order a defendant who is convicted of  
5 violating this subdivision to make restitution to a battered woman  
6 in an amount equal to the relocation expenses of the battered  
7 woman and her children if those expenses are incurred as a result  
8 of trespass by the defendant at a battered women's shelter.

9 (x) (1) Knowingly entering or remaining in a neonatal unit,  
10 maternity ward, or birthing center located in a hospital or clinic  
11 without lawful business to pursue therein, if the area has been  
12 posted so as to give reasonable notice restricting access to those  
13 with lawful business to pursue therein and the surrounding  
14 circumstances would indicate to a reasonable person that he or  
15 she has no lawful business to pursue therein. Reasonable notice is  
16 that which would give actual notice to a reasonable person, and is  
17 posted, at a minimum, at each entrance into the area.

18 (2) Any person convicted of a violation of paragraph (1) shall  
19 be punished as follows:

20 (A) As an infraction, by a fine not exceeding one hundred  
21 dollars (\$100).

22 (B) By imprisonment in a county jail not exceeding one year,  
23 or by a fine not exceeding one thousand dollars (\$1,000), or both,  
24 if the person refuses to leave the posted area after being  
25 requested to leave by a peace officer or other authorized person.

26 (C) By imprisonment in a county jail not exceeding one year,  
27 or by a fine not exceeding two thousand dollars (\$2,000), or both,  
28 for a second or subsequent offense.

29 (D) If probation is granted or the execution or imposition of  
30 sentencing is suspended for any person convicted under this  
31 subdivision, it shall be a condition of probation that the person  
32 participate in counseling, as designated by the court, unless the  
33 court finds good cause not to impose this requirement. The court  
34 shall require the person to pay for this counseling, if ordered,  
35 unless good cause not to pay is shown.